

House Study Bill 241

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON SWAIM)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to trusts and estates including fiduciaries and
2 beneficiaries and including applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1083HC 82
5 rh/je/5

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1 1 Section 1. Section 421.27, subsection 1, Code 2007, is
2 amended by adding the following new paragraph:
1 3 NEW PARAGRAPH. m. The failure to file a timely
1 4 inheritance tax return resulting solely from a disclaimer that
1 5 required the personal representative to file an inheritance
1 6 tax return. The penalty shall be waived if such return is
1 7 filed and any tax due is paid within the later of nine months
1 8 from the date of death or sixty days from the delivery or
1 9 filing of the disclaimer pursuant to section 633E.12.
1 10 Sec. 2. Section 450.4, Code 2007, is amended by adding the
1 11 following new subsection:
1 12 NEW SUBSECTION. 9. On the value of tangible personal
1 13 property as defined in section 633.276 which is distributed in
1 14 kind from the estate if the aggregate of all tangible personal
1 15 property in the estate does not exceed five thousand dollars.
1 16 Sec. 3. Section 561.1, Code 2007, is amended to read as
1 17 follows:
1 18 561.1 "HOMESTEAD" DEFINED.
1 19 1. The homestead must embrace the house used as a home by
1 20 the owner, and, if the owner has two or more houses thus used,
1 21 the owner may select which the owner will retain. It may
1 22 contain one or more contiguous lots or tracts of land, with
1 23 the building and other appurtenances thereon, habitually and
1 24 in good faith used as part of the same homestead.
1 25 2. As used in this chapter, "owner" includes but is not
1 26 limited to the person, or the surviving spouse of the person,
1 27 occupying the homestead as a beneficiary of a trust that
1 28 includes the property in the trust estate.
1 29 Sec. 4. NEW SECTION. 598.20A BENEFICIARY REVOCATION ==
1 30 LIFE INSURANCE.
1 31 1. Except as preempted by federal law, if a decree of
1 32 dissolution, annulment, or separate maintenance is issued
1 33 after an insured has designated the insured's spouse or one or
1 34 more relatives of the insured's spouse as a beneficiary under
1 35 a life insurance policy in effect on the date of the decree, a
2 1 provision in the life insurance policy making such a
2 2 designation is voided by the issuance of the decree unless any
2 3 of the following apply:
2 4 a. The decree designates the insured's former spouse or
2 5 one or more relatives of the insured's spouse as beneficiary.
2 6 b. After issuance of the decree, the insured executes a
2 7 designation of beneficiary form provided by the insurance
2 8 company naming the insured's former spouse or one or more
2 9 relatives of the insured's former spouse as beneficiary.
2 10 c. The insured and the insured's former spouse remarry.
2 11 2. If a beneficiary designation is not effective pursuant
2 12 to subsection 1, the benefits or proceeds of the life
2 13 insurance policy are payable to an alternate beneficiary, or
2 14 if there is no alternate beneficiary, to the estate of the
2 15 insured.
2 16 3. An insurer who pays benefits or proceeds of a life
2 17 insurance policy to a beneficiary under a designation that is
2 18 void pursuant to subsection 1 is not liable for payment to an

2 19 alternative beneficiary as provided under subsection 2 unless
2 20 both of the following apply:

2 21 a. At least ten days prior to payment of the benefits or
2 22 proceeds of the life insurance policy to the designated
2 23 beneficiary, the insurer receives written notice at the home
2 24 office of the insurer that the designation of the beneficiary
2 25 is not effective pursuant to subsection 1.

2 26 b. The insurer has failed to interplead the benefits or
2 27 proceeds of the life insurance policy in a court of competent
2 28 jurisdiction in accordance with the rules of civil procedure.

2 29 4. This section does not limit the right of a beneficiary
2 30 to seek recovery from any person or entity that erroneously
2 31 receives or collects the benefits or proceeds from a life
2 32 insurance policy.

2 33 5. This section does not affect the right of an insured's
2 34 former spouse to assert an ownership interest in a life
2 35 insurance policy that is not disclosed to the insured's spouse
3 1 prior to the decree of dissolution, annulment, or separate
3 2 maintenance and that is not addressed by the decree.

3 3 6. For purposes of this section, "relative of the
3 4 insured's spouse" means a person who is related to the
3 5 insured's former spouse by blood, adoption, or affinity, and
3 6 who, subsequent to a decree of dissolution, annulment, or
3 7 separate maintenance, ceases to be related to the insured by
3 8 blood, adoption, or affinity.

3 9 Sec. 5. NEW SECTION. 598.20B BENEFICIARY REVOCATION ==
3 10 OTHER CONTRACTS.

3 11 1. Except as preempted by federal law, if a decree of
3 12 dissolution, annulment, or separate maintenance is issued
3 13 after a participant, annuitant, or account holder has
3 14 designated the participant's, annuitant's, or account holder's
3 15 spouse or one or more relatives of the participant's,
3 16 annuitant's, or account holder's spouse as beneficiary under
3 17 any individual retirement account, stock option plan, transfer
3 18 on death account, payable on death account, or annuity in
3 19 force at the date of the decree, a provision in the retirement
3 20 account, stock option plan, transfer on death account, payable
3 21 on death account, or annuity designating the participant's,
3 22 annuitant's, or account holder's spouse or one or more
3 23 relatives of the participant's, annuitant's, or account
3 24 holder's spouse as beneficiary is voided by the issuance of
3 25 the decree unless any of the following apply:

3 26 a. The decree designates the participant's, annuitant's,
3 27 or account holder's spouse or one or more relatives of the
3 28 participant's, annuitant's, or account holder's spouse as
3 29 beneficiary.

3 30 b. After issuance of the decree, the participant,
3 31 annuitant, or account holder executes a designation of
3 32 beneficiary form provided by the plan or company naming the
3 33 participant's, annuitant's, or account holder's former spouse
3 34 or one or more relatives of the participant's, annuitant's, or
3 35 account holder's former spouse as the beneficiary.

4 1 c. The participant, annuitant, or account holder and the
4 2 participant's, annuitant's, or account holder's former spouse
4 3 remarry.

4 4 2. If a beneficiary designation is not effective pursuant
4 5 to subsection 1, the benefits or proceeds from the individual
4 6 retirement account, stock option plan, transfer on death
4 7 account, payable on death account, or annuity are payable to
4 8 an alternate beneficiary, or if there is no alternate
4 9 beneficiary, to the estate of the participant, annuitant, or
4 10 account holder.

4 11 3. A business entity, employer, insurer, financial
4 12 institution, or other person or entity obligated to pay the
4 13 benefits or proceeds from an individual retirement account,
4 14 stock option plan, transfer on death account, payable on death
4 15 account, or annuity to a beneficiary under a designation that
4 16 is void pursuant to subsection 1 is not liable for payment of
4 17 the benefits or proceeds to a beneficiary as provided under
4 18 subsection 2 unless both of the following apply:

4 19 a. At least ten days prior to payment of the benefits or
4 20 proceeds to the designated beneficiary, the business entity,
4 21 employer, insurer, financial institution, or other person or
4 22 entity obligated to pay the benefits or proceeds receives
4 23 written notice at the home office of the business entity,
4 24 employer, insurer, financial institution, or other person or
4 25 entity that the designation of the beneficiary is not
4 26 effective pursuant to subsection 1.

4 27 b. The business entity, employer, insurer, financial
4 28 institution, or other person or entity has failed to
4 29 interplead the benefits or proceeds in a court of competent

4 30 jurisdiction in accordance with the rules of civil procedure.
4 31 4. This section does not limit the right of a beneficiary
4 32 to seek recovery from any person or entity that erroneously
4 33 receives or collects the benefits or proceeds of an individual
4 34 retirement account, stock option plan, transfer on death
4 35 account, payable on death account, or annuity.

5 1 5. This section does not affect the right of the
5 2 participant's, annuitant's, or account holder's former spouse
5 3 to assert an ownership interest in an individual retirement
5 4 account, stock option plan, transfer or payable on death
5 5 account, or annuity that is not disclosed to the
5 6 participant's, annuitant's, or account holder's spouse prior
5 7 to the issuance of the decree of dissolution, annulment, or
5 8 separate maintenance and that is not addressed by the decree.

5 9 6. For purposes of this section, "relative of the
5 10 participant's, annuitant's, or account holder's spouse" means
5 11 a person who is related to the participant's, annuitant's, or
5 12 account holder's former spouse by blood, adoption, or
5 13 affinity, and who, subsequent to a decree of dissolution,
5 14 annulment, or separate maintenance ceases to be related to the
5 15 participant, annuitant, or account holder by blood, adoption,
5 16 or affinity.

5 17 Sec. 6. Section 602.8102, subsection 106, Code 2007, is
5 18 amended to read as follows:

5 19 106. Carry out duties relating to the administration of
5 20 small estates as provided in ~~sections 635.1, 635.7, and 635.9~~
5 21 ~~chapter 635.~~

5 22 Sec. 7. NEW SECTION. 633.123 PRUDENT INVESTMENTS ==
5 23 FIDUCIARIES.

5 24 1. When investing, reinvesting, purchasing, acquiring,
5 25 exchanging, selling, or managing property for the benefit of
5 26 another, a fiduciary shall consider all of the following
5 27 circumstances along with the circumstances identified in
5 28 section 633A.4302, if applicable:

5 29 a. The length of time the fiduciary will have control over
5 30 the estate assets and the anticipated costs of complying with
5 31 the provisions of this section.

5 32 b. The unique nature of all of the following:

5 33 (1) The duties of a personal representative or
5 34 conservator.

5 35 (2) The assets, income, expenses, and distribution
6 1 requirements of the estate.

6 2 (3) The needs and rights of the beneficiaries or the ward.

6 3 c. The express provisions of a will, codicil, or other
6 4 controlling instrument.

6 5 2. The standards identified in this section shall be
6 6 applied differently than similar standards for investment and
6 7 management of trust property. Special consideration shall be
6 8 given to the expected term of estates. Because some estates
6 9 will have limited duration, there may be situations where an
6 10 investment or a change in an investment is not warranted.

6 11 Sec. 8. Section 633.168, Code 2007, is amended to read as
6 12 follows:

6 13 633.168 OATH == CERTIFICATION.

6 14 Every fiduciary, before entering upon the duties of the
6 15 fiduciary's office ~~and within such time as the court or clerk~~
~~6 16 directs,~~ shall subscribe an oath or certify under penalties of
6 17 perjury that the fiduciary will faithfully discharge the
6 18 duties imposed by law, according to the best of the
6 19 fiduciary's ability.

6 20 Sec. 9. Section 633.178, Code 2007, is amended to read as
6 21 follows:

6 22 633.178 LETTERS.

6 23 Upon the filing of an oath of office or certification and a
6 24 bond, if any is required, the clerk shall issue letters under
6 25 the seal of the court, giving the fiduciary the powers
6 26 authorized by law.

6 27 Sec. 10. Section 633.199, Code 2007, is amended to read as
6 28 follows:

6 29 633.199 EXPENSES AND EXTRAORDINARY SERVICES.

6 30 Such further allowances as are just and reasonable may be
6 31 made by the court to personal representatives and their
6 32 attorneys for actual necessary and extraordinary expenses ~~or~~
6 33 and services. Necessary and extraordinary services shall be
6 34 construed to ~~also include~~ but not be limited to services in
6 35 connection with real estate, tax ~~matters, and litigated~~
7 1 issues, disputed matters, nonprobate assets, reopening the
7 2 estate, location of unknown and lost heirs and beneficiaries,

7 3 and management and disposition of unusual assets. Relevant

7 4 factors to be considered in determining the value of such

7 5 services shall include but not be limited to the following:

- 7 6 1. Time necessarily spent by the personal representatives
- 7 7 and their attorneys.
- 7 8 2. Nature of the matters or issues and the extent of the
- 7 9 services provided.
- 7 10 3. Complexity of the issues and the importance of the
- 7 11 issues to the estate.
- 7 12 4. Responsibilities assumed.
- 7 13 5. Resolution.
- 7 14 6. Experience and expertise of the personal
- 7 15 representatives and their attorneys.

7 16 Sec. 11. Section 633.272, Code 2007, is amended to read as
7 17 follows:

7 18 633.272 PARTIAL INTESTACY.

7 19 If part but not all of the estate of a decedent is validly
7 20 disposed of by will, the part not disposed of by will shall be
7 21 distributed as provided herein for intestate estates. If the
7 22 testator left a surviving spouse, and the spouse does not
7 23 ~~elect to take against the will~~ take an elective share, the
7 24 spouse shall receive, in addition to the property given to the
7 25 spouse by the will, ~~all so much~~ of the intestate property
7 26 ~~which shall be~~ subject to the payment of its proportionate
7 27 share of debts and charges against the estate as the spouse
7 28 would receive pursuant to section 633.211 or 633.212.

7 29 Sec. 12. Section 633.551, Code 2007, is amended by adding
7 30 the following new subsection:

7 31 NEW SUBSECTION. 5. Except as otherwise provided in
7 32 sections 633.672 and 633.673, in proceedings to establish a
7 33 guardianship or conservatorship, the costs, including attorney
7 34 fees and expert witness fees, shall be assessed against the
7 35 ward or the ward's estate unless the proceeding is dismissed
8 1 either voluntarily or involuntarily, in which case fees and
8 2 costs may be assessed against the petitioner.

8 3 Sec. 13. Section 633.669, subsection 1, paragraph b, Code
8 4 2007, is amended to read as follows:

8 5 b. An annual report, within ninety days of the close of
8 6 the reporting period, unless the court otherwise orders on
8 7 good cause shown.

8 8 Sec. 14. Section 633.670, subsection 1, paragraph b,
8 9 subparagraph (1), Code 2007, is amended to read as follows:

8 10 (1) Annually, within ninety days of the close of the
8 11 reporting period, unless the court otherwise orders on good
8 12 cause shown.

8 13 Sec. 15. Section 633.700, unnumbered paragraph 1, Code
8 14 2007, is amended to read as follows:

8 15 Unless specifically relieved from so doing, by the
8 16 instrument creating the trust, or by order of the court, the
8 17 trustee shall make a written report, under oath, to the court,
8 18 once each year, within ninety days of the close of the
8 19 reporting period, and more often, if required by the court.

8 20 Such report shall state:

8 21 Sec. 16. Section 633A.4703, unnumbered paragraph 1, Code
8 22 2007, is amended to read as follows:

8 23 Except as otherwise provided by the governing instrument,
8 24 where necessary to abate shares of the beneficiaries of a
8 25 trust for the payment of debts and charges, federal and state
8 26 estate taxes, bequests, the share of the surviving spouse who
8 27 takes an elective share, and the shares of children born or
8 28 adopted after the execution of the trust, abatement shall
8 29 occur in the following order:

8 30 Sec. 17. Section 633A.4703, subsection 4, Code 2007, is
8 31 amended to read as follows:

8 32 4. Notwithstanding subsections 1, 2, or 3, a disposition
8 33 in favor of the ~~grantor's settlor's~~ surviving spouse who does
8 34 not take an elective share shall not be abated where such

8 35 abatement would have the effect of increasing the amount of
9 1 federal estate or federal gift taxes payable by a person or an
9 2 entity.

9 3 Sec. 18. Section 635.1, Code 2007, is amended by striking
9 4 the section and inserting in lieu thereof the following:

9 5 635.1 WHEN APPLICABLE.

9 6 When the gross value of the probate assets of a decedent
9 7 subject to the jurisdiction of this state does not exceed one
9 8 hundred thousand dollars, and upon a petition as provided in
9 9 section 635.2 of an authorized petitioner in accordance with
9 10 section 633.227, 633.228, or 633.290, the clerk shall issue
9 11 letters of appointment for administration to the proposed
9 12 personal representative named in the petition, if qualified to
9 13 serve. Unless otherwise provided in this chapter, the
9 14 provisions of chapter 633 apply to an estate probated pursuant
9 15 to this chapter.

9 16 Sec. 19. Section 635.2, Code 2007, is amended to read as

9 17 follows:

9 18 635.2 PETITION REQUIREMENTS.

9 19 The petition for administration of a small estate must
9 20 contain the following:

9 21 1. The name, domicile, and date of death of the decedent.

9 22 2. The name and address of the surviving spouse, if any;
9 23 ~~the name and address of each child of the decedent, the name~~
9 24 ~~and address of each parent of the decedent, if the parent is~~
9 25 ~~an heir or beneficiary of the decedent, and the name and~~
9 26 ~~address of each grandchild of the decedent if the grandchild~~
9 27 ~~is an heir or beneficiary of the decedent, unless none are~~
9 28 ~~beneficiaries under the will of the decedent, and the name and~~
9 29 ~~address of each relative within the fourth degree of~~
9 30 ~~consanguinity of the decedent who is an heir or beneficiary of~~
9 31 ~~the decedent, unless none are beneficiaries under the will of~~
9 32 ~~the decedent.~~

9 33 3. Whether the decedent died intestate or testate, and, if
9 34 testate, the date of the will was executed.

9 35 4. A statement that the probate and nonprobate property of
10 1 the decedent subject to the jurisdiction of this state does
10 2 not have an aggregate gross value of more than the amount
10 3 permitted under the provisions of section 635.1.

10 4 5. The name and address of the proposed ~~executor or~~
10 5 ~~administrator personal representative.~~

10 6 Sec. 20. Section 635.7, Code 2007, is amended to read as
10 7 follows:

10 8 635.7 REPORT AND INVENTORY == EXCESS VALUE AND TERMINATION
10 9 CONVERSION.

10 10 1. ~~The executor or administrator personal representative~~
10 11 ~~is required to file the report and inventory for which~~
10 12 ~~provision is made in section 633.361, including all probate~~
10 13 ~~and nonprobate assets. Nothing in sections 635.1 to 635.3~~
10 14 ~~shall This chapter does not exempt the executor or~~
10 15 ~~administrator personal representative from complying with the~~
10 16 ~~requirements of section 422.27, 450.22, 450.58, 633.480, or~~
10 17 ~~633.481, and the administration of an estate whether converted~~
10 18 ~~to or from a small estate shall be considered one proceeding~~
10 19 ~~pursuant to section 633.330.~~

10 20 2. If the inventory and report shows the gross value of
10 21 probate assets subject to the jurisdiction of this state which
10 22 exceed the total gross value of the amount permitted the a
10 23 small estate under the applicable provision of section 635.1,
10 24 the clerk shall terminate the letters issued under section
10 25 635.1 without prejudice to the rights of persons who delivered
10 26 property as permitted under section 635.3. The executor or
10 27 administrator shall then be required to petition for
10 28 administration of the estate shall be administered as provided
10 29 in chapter 633.

10 30 3. If the inventory report in an estate probated pursuant
10 31 to chapter 633 indicates the gross value of the probate assets
10 32 subject to the jurisdiction of this state does not exceed the
10 33 amount permitted under section 635.1, the estate shall be
10 34 administered as a small estate upon the filing of a statement
10 35 by the personal representative that the estate is a small

11 1 estate.
11 2 4. Other interested parties may convert proceedings from a
11 3 small estate to a regular estate or from a regular estate to a
11 4 small estate only upon good cause shown with approval from the
11 5 court.

11 6 Sec. 21. Section 635.8, Code 2007, is amended to read as
11 7 follows:

11 8 635.8 CLOSING BY SWORN STATEMENT.

11 9 1. ~~Unless an interested person petitions for~~
11 10 ~~administration of the estate on a basis other than for a small~~
11 11 ~~estate within four months after letters of administration for~~
11 12 ~~a small estate are issued, if those letters of administration~~
11 13 ~~are not terminated under the provisions of section 635.7, any~~
11 14 ~~property of the estate shall then be free of debts and~~
11 15 ~~charges, unless a claim has been filed as provided in section~~
11 16 ~~635.13. The executor or administrator is personally liable~~
11 17 ~~for the payment of debts and charges against the estate to the~~
11 18 ~~extent the assets of the estate would be subject to the~~
11 19 ~~payment of those debts and charges under estate administration~~
11 20 ~~other than a small estate.~~

11 21 2. 1. The executor or administrator personal
11 22 representative shall file with the court a closing statement
11 23 within six months a reasonable time from the date of issuance
11 24 of the letters of appointment, and the closing statement shall
11 25 be verified or affirmed under penalty of perjury, stating all
11 26 of the following:

11 27 a. To the best knowledge of the ~~person~~ personal

11 28 ~~representative, the gross value of the estate probate assets~~
11 29 ~~subject to the jurisdiction of this state does not exceed the~~
11 30 ~~amount permitted the small estate under the applicable~~
11 31 ~~provision of section 635.1.~~
11 32 ~~b. The estate has been fully administered, dispersed, and~~
11 33 ~~will be disbursed and distributed to persons entitled to the~~
11 34 ~~estate and a if no objection is filed to the closing statement~~
11 35 ~~after the requisite time period has expired as provided in~~

12 1 ~~subsection 2.~~

12 2 ~~c. A description of the disbursement and distribution of~~
12 3 ~~the estate including an accurate description of all the real~~
12 4 ~~estate of which the decedent died seized, stating the nature~~
12 5 ~~and extent of the interest in the real estate and its~~
12 6 ~~disposition.~~

12 7 ~~e. d. A copy of the closing statement and an opportunity~~
12 8 ~~to object and request a hearing has been sent to all~~
12 9 ~~distributees of the estate and to all known creditors and a~~
12 10 ~~full account in writing of the administration of the estate~~
12 11 ~~has been furnished to the distributees whose interests are~~
12 12 ~~affected by proper notice, as provided in section 633.40, to~~
12 13 ~~all interested parties.~~

12 14 ~~e. The personal representative has complied with all~~
12 15 ~~statutory requirements pertaining to taxes, including whether~~
12 16 ~~federal estate tax was paid or a return was filed, whether~~
12 17 ~~Iowa inheritance tax was paid or a return was filed, whether~~
12 18 ~~the decedent's final personal income taxes were filed, whether~~
12 19 ~~fiduciary income tax returns for the estate were filed, and~~
12 20 ~~whether a lien continues to exist for any federal or state~~
12 21 ~~tax.~~

12 22 ~~3- 2. If no actions or proceedings involving the estate~~
12 23 ~~are pending in the court sixty thirty days after notice of the~~
12 24 ~~closing statement is filed, the estate shall close after~~
12 25 ~~distribution and the clerk shall discharge the administrator~~
12 26 ~~or executor personal representative shall be discharged.~~

12 27 ~~4- 3. The closing statement shall include a statement as~~
12 28 ~~to the amount of fees to be paid for services rendered by the~~
12 29 ~~executor or administrator personal representative and the~~
12 30 ~~executor's or administrator's personal representative's~~
12 31 ~~attorney in administration of the estate. The fees for the~~
12 32 ~~executor or administrator and the executor's or~~
12 33 ~~administrator's attorney shall not be in excess of the fees~~
12 34 ~~permitted by section 633.197 personal representative shall not~~
12 35 ~~exceed three percent of the gross value of the probate assets~~
13 1 ~~of the estate, unless the personal representative itemizes the~~
13 2 ~~personal representative's services to the estate. The~~
13 3 ~~personal representative's attorney shall be paid reasonable~~
13 4 ~~fees as agreed to in writing by the personal representative at~~
13 5 ~~or before the time of filing the probate inventory or as~~
13 6 ~~approved by the court. All interested parties shall have the~~
13 7 ~~opportunity to object and request a hearing as to all fees~~
13 8 ~~reported in the closing statement.~~

13 9 ~~5- 4. If a closing statement is not filed within twelve~~
13 10 ~~months of the date of issuance of a letter of appointment, an~~
13 11 ~~interlocutory report shall be filed within such time period.~~
13 12 ~~Such report shall be provided to all interested parties at~~
13 13 ~~least once every six months until the closing statement has~~
13 14 ~~been filed unless excused by the court for good cause shown.~~

13 15 ~~A closing statement filed under this section has the same~~
13 16 ~~effect as final settlement of the estate under chapter 633.~~

13 17 ~~Sec. 22. Section 635.13, Code 2007, is amended to read as~~
13 18 ~~follows:~~

13 19 ~~635.13 NOTICE == CLAIMS.~~

13 20 ~~If a petition for administration of a small estate of a~~
13 21 ~~decedent is granted, the notice as provided in section~~
13 22 ~~633.237, and either sections 633.230 and 633.231 or section~~
13 23 ~~sections 633.304 and 633.304A shall indicate administration as~~
13 24 ~~a small estate be given. Creditors having claims against the~~
13 25 ~~estate must file them with the clerk within four months from~~
13 26 ~~the second publication of the notice the applicable time~~
13 27 ~~periods provided in such notices. The notice has the same~~
13 28 ~~force and effect as in chapter 633. Claimants of the estate~~
13 29 ~~shall be interested parties of the estate as long as the~~
13 30 ~~claims are pending in the estate.~~

13 31 ~~Sec. 23. Sections 635.3, 635.4, 635.5, 635.6, 635.9,~~
13 32 ~~635.10, 635.11, 635.12, and 635.14, Code 2007, are repealed.~~

13 33 ~~Sec. 24. CODE EDITOR DIRECTIVE. The Code editor is~~
13 34 ~~directed to transfer and renumber sections 635.7, 635.8, and~~
13 35 ~~635.13, as amended in this Act, to enhance the readability of~~
14 1 ~~Code chapter 635.~~

14 2 ~~Sec. 25. APPLICABILITY.~~

14 3 ~~1. The sections of this Act amending sections 633.168 and~~

14 4 633.178 apply to fiduciaries appointed on or after July 1,
14 5 2007.
14 6 2. The sections of this Act amending sections 421.27,
14 7 450.4, 602.8102, 633.199, 633.272, 633A.4703, 635.1, 635.2,
14 8 635.7, 635.8, and 635.13 apply to estates of decedents dying
14 9 on or after July 1, 2007.
14 10 3. The section of this Act amending section 561.1 applies
14 11 retroactively to beneficiaries of trusts in existence on or
14 12 after July 1, 1997.
14 13 4. The sections of this Act enacting sections 598.20A and
14 14 598.20B apply to all decrees of dissolution, annulment, or
14 15 separation entered on or after July 1, 2007.
14 16 5. The section of this Act enacting section 633.123
14 17 applies to all estates, conservatorships, and trusts under
14 18 court supervision in existence on or after July 1, 2007.
14 19 6. The section of this Act amending section 633.551
14 20 applies to petitions filed on or after July 1, 2007.
14 21 7. The sections of this Act amending sections 633.669,
14 22 633.670, and 633.700 apply to annual reports of guardians,
14 23 conservators, and court-supervised trusts due on or after July
14 24 1, 2007.
14 25 8. The section of this Act repealing sections 635.3,
14 26 635.4, 635.5, 635.6, 635.9, 635.10, 635.11, 635.12, and 635.14
14 27 applies to estates of decedents dying on or after July 1,
14 28 2007.

14 29 EXPLANATION

14 30 This bill relates to trusts and estates including
14 31 fiduciaries and beneficiaries and includes applicability
14 32 provisions.

14 33 The bill allows the department of revenue to waive the
14 34 imposition of a penalty involving an estate with a disclaimer
14 35 that is filed more than nine months from the date of the
15 1 decedent's death if, solely due to the disclaimer, the
15 2 personal representative is required to file an inheritance tax
15 3 return and such return is filed and any tax due is paid within
15 4 the later of nine months from the date of death or 60 days
15 5 from the filing of the disclaimer.

15 6 The bill eliminates inheritance tax on tangible personal
15 7 property that is distributed in kind to beneficiaries if the
15 8 aggregate total value of all tangible personal property in the
15 9 estate is \$5,000 or less.

15 10 The bill preserves the homestead status for trust-owned
15 11 property occupied by the beneficiary of the trust or the
15 12 beneficiary's spouse. This provision applies retroactively to
15 13 beneficiaries of trusts in existence on or after July 1, 1997.

15 14 The bill provides that, unless preempted by federal law, if
15 15 a decree of dissolution, annulment, or separate maintenance is
15 16 issued after a person has designated the person's spouse or a
15 17 relative of the person's spouse a beneficiary under a life
15 18 insurance policy, individual retirement account, stock option
15 19 plan, transfer on death account, payable on death account, or
15 20 annuity in effect on the date of the decree, such a
15 21 beneficiary designation is revoked by the issuance of the
15 22 decree unless the decree or the person provides otherwise or
15 23 the person and the person's spouse remarry. The bill provides
15 24 that upon revocation of a beneficiary designation in such
15 25 cases, the proceeds or benefits shall be paid to an alternate
15 26 beneficiary or to the person's estate if there is no alternate
15 27 beneficiary. The bill provides that an insurer, business
15 28 entity, employer, financial institution, or other person who
15 29 mistakenly pays proceeds or benefits to a beneficiary is not
15 30 liable unless at least 10 days prior to payment, the insurer,
15 31 business entity, employer, financial institution, or other
15 32 person receives written notice that the designation of the
15 33 beneficiary is revoked and such persons failed to interplead
15 34 the proceeds or benefits before the court. The bill does not
15 35 limit the right of a beneficiary to seek recovery from any
16 1 person or entity that erroneously collects such proceeds or
16 2 benefits and does not affect the right of a former spouse to
16 3 assert an ownership interest in a nondisclosed life insurance
16 4 policy, individual retirement account, stock option plan,
16 5 transfer on death account, payable on death account, or
16 6 annuity in effect on the date of the decree. These provisions
16 7 apply to all decrees of dissolution, annulment, or separate
16 8 maintenance entered on or after July 1, 2007.

16 9 The bill establishes investment management standards for
16 10 conservators and personal representatives of estates,
16 11 consistent with current investment management practices, and
16 12 provides that when managing and investing an account, a
16 13 fiduciary shall consider, among other factors, the length of
16 14 time the fiduciary will have control over the estate assets

16 15 and the anticipated costs of complying with the provisions of
16 16 the bill, the unique nature of the duties of the personal
16 17 representative or conservator, the assets, income, expenses,
16 18 and distribution requirements of the estate, and the needs and
16 19 rights of the beneficiaries or the ward. This provision
16 20 applies to all estates, conservatorships, and trusts in
16 21 existence on or after July 1, 2007.

16 22 The bill allows a fiduciary in a probate matter to accept a
16 23 fiduciary appointment by signing an oath of office in the
16 24 presence of a notary public or to certify under penalty of
16 25 perjury a promise to perform the fiduciary's duties. The bill
16 26 also authorizes a clerk of court to issue a letter of
16 27 appointment consistent with this new procedure for fiduciary
16 28 appointments.

16 29 The bill provides certain factors to be considered by the
16 30 probate court when determining the value of extraordinary
16 31 services of a personal representative and a personal
16 32 representative's attorneys, including but not limited to the
16 33 time spent on the case, the nature and complexity of the
16 34 issues in the case, the responsibilities assumed, the
16 35 resolution obtained, and the experience and expertise of the
17 1 personal representative and the attorney.

17 2 The bill provides a surviving spouse with the same share in
17 3 partial intestacy as would be received in full intestacy
17 4 consistent with spousal elective share amendments enacted in
17 5 2005.

17 6 The bill authorizes a court to assess attorney and expert
17 7 witness fees and other costs against the petitioner instead of
17 8 the proposed ward if a guardianship or conservatorship
17 9 petition is dismissed or denied.

17 10 The bill allows a conservator, guardian, or trustee of a
17 11 trust subject to ongoing court supervision under the probate
17 12 code to avoid delinquency notices if the conservator,
17 13 guardian, or trustee files an annual report within 90 days of
17 14 the close of the requisite reporting period.

17 15 The bill amends the trust code abatement provisions to
17 16 specify that a surviving spouse who does not take an elective
17 17 share will be protected from abatement if such abatement would
17 18 increase applicable federal estate or gift taxes.

17 19 The bill amends Code chapter 635 relating to a personal
17 20 representative's administration of a small estate with probate
17 21 assets less than or equal to \$100,000 including provisions
17 22 which allow for less court involvement and reasonable fees for
17 23 a personal representative and an attorney of a personal
17 24 representative. The bill repeals provisions in Code chapter
17 25 635 consistent with this purpose.

17 26 Unless otherwise indicated, the bill applies to estates of
17 27 decedents dying on or after July 1, 2007.

17 28 LSB 1083HC 82

17 29 rh:rj/je/5.1